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DK

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/210,490

12/11/98

WEAVER

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P03592US0

HM22/1108
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DES MOINES IA 50309

EXAMINER

EWOLDT, G

ART UNIT

PAPER NUMBER

1644

DATE MAILED:

11/08/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/210,490

Applicant(s)

Weaver, Thomson

Examiner

Gerald Ewoldt

Group Art Unit

1644



☒ Responsive to communication(s) filed on Sep 20, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 10-14 and 22-31 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 10-14 and 22-31 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

1. The Examiner of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Gerald Ewoldt in Group Art Unit 1644.

2. **AMENDMENT CHANGES**

Applicant's amendment, filed 9/20/99 (Paper No.4), is acknowledged. Claims 1-9 and 15-21 have been canceled.

Claims 22-31 have been added.

Claims 10-14, and 22-31 are pending and being acted upon presently.

3. **ELECTION**

Applicant's arguments, filed 9/20/99 (Paper No. 4), concerning the restriction requirement are rendered moot given the cancellation of the non-elected Claims.

4. **REJECTIONS: 35 U.S.C. § 112**

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 23 is rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim recites "about 0.1-0.75% by weight." whereas the specification (page 15, 2nd paragraph) discloses "approximately 0.1-0.75% by weight." The terms "about" and "approximately" have different definitions, about being considerably broader in scope.

Applicant is required to cancel the new matter in the response to this Office Action.

Alternatively, Applicant is invited to use the language of the Specification in the Claim.

6. **REJECTIONS: 35 U.S.C. § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 10, 12, 22-23, 26-29, and 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Newson and Atwell (U. S. Patent No. 4,096,244, IDS). Newson and Atwell teach the use of blood-derived immunoglobulins in a liquid feed source for the immunological protection of piglets (see particularly Example 1 and Claim 1) in concentrations encompassing the claimed limitations of "about 0.375 to about 3% globulin concentrate", "about 0.1-0.75% concentration of IgG", and "a dose of 0.5 immunoglobulin/hd/day or more", and including additives and nutrients.

8. Claims 10, 12, 22-29, and 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Elliot et al. (U. S. Patent No. 4,623,541, IDS). Elliot et al. teach the use of blood-derived immunoglobulins in a liquid feed source that provides for both immunological protection and increased weight gain in piglets (see particularly Example 1 and Biological (Animal) Test) in concentrations encompassing the claimed limitations of "about 0.375 to about 3% globulin concentrate", "about 0.1-0.75% concentration of IgG", and "a dose of 0.5 immunoglobulin/hd/day or more", and including additives and nutrients.

9. Claims 10, 12, 23-25, 27-29, and 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Frenyo (Vet. Res. Com., 1987, IDS). Frenyo teaches the use of liquid feed sources containing immunoglobulins for immunoprotection of piglets (see entire document) in concentrations encompassing the claimed limitations of "about 0.375 to about 3% globulin concentrate", "about 0.1-0.75% concentration of IgG", and "a dose of 0.5 immunoglobulin/hd/day or more".

10. REJECTIONS: 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 10-14 and 22-31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stott et al. (U. S. Patent No. 4,816,252, IDS) in view of Watanabe (Japan Patent No. 61-132143, IDS) and Elliot (supra).

Stott et al. teach the use of immunoglobulins as supplements in the feed of newborn animals for the transfer of passive immunity to said animals.

Stott does not teach the specific use of antibodies to promote weight gain and growth.

Watanabe teaches the use immunoglobulins as feed supplements to promote weight gain in pigs.

Elliot also teaches the use of immunoglobulins as feed supplements as described above.

Given the prior art teachings of using immunoglobulins in feed supplements to provide passive immunity and to promote weight gain, it would have been obvious to use a globulin concentrate as a feed supplement for piglets and to optimize the concentration of immunoglobulins for maximum weight gain and growth as well as decreased morbidity and mortality. One of ordinary skill in the art at the time the invention was made would have been motivated to encompass the claimed dosages (Claims 11 and 22-25), the claimed additives (Claim 26) and the claimed animal populations (Claims 12-14 and 28-30) in order to achieve the referenced passive immunity and nourishment. It would have been expected that various concentrations and dosages would be required by animals of different ages and weights with different nutritional and immunological needs.

One of ordinary skill in the art at the time the invention was made would have been motivated to add the water stable supplement to the water source (Claims 10 and 31) of any animal population to provide for passive immunity and nourishment, including animals that might not have been consuming solid feed and whose only intake was water.

From the teachings of the references, it was apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

12. No claim is allowed.

Serial No. 09/210490
Art Unit 1644

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13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Gerald Ewoldt whose telephone number is (703) 308-9805. The Examiner can normally be reached Monday through Friday from 8:00 am to 5:00 pm. A message may be left on the Examiner's voice mail service. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Gerald Ewoldt, Ph.D.
Patent Examiner
Group 1640
Technology Center 1600
November 4, 1999

PHILIP GAMBLER
PATENT EXAMINER
GROUP 1640

TECH CENTER 1600
PHILIP GAMBLER
11/8/99